

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 191988

Oakland Circuit Court

QUENTIN DEE BETTY,

LC No. 95-137938-FC

Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

No. 192776

Oakland Circuit Court

SPENCER JORY OLIVER,

LC No. 95-137939-FC

Defendant-Appellant.

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

FITZGERALD, J. (concurring in part and dissenting in part.)

I respectfully dissent from the majority's conclusion that defendant Betty was not denied the effective assistance of counsel. A defendant is entitled to a trial separate and apart from a codefendant who it appears may testify to exculpate himself and incriminate the defendant seeking a separate trial. *People v Hoffman*, 205 Mich App 1, 19-20; 518 NW2d 817 (1994). In my opinion, defendant Oliver's testimony was inconsistent and irreconcilable with defendant Betty's defense that he shot the victim in self-defense. *People v Hana*, 447 Mich 325, 349; 524 NW2d 682 (1994). Further, had defendant Oliver been separately tried, or tried before a separate jury at a joint trial, the jury would not have been permitted to hear defendant Oliver's inadmissible out-of-court statements. *Bruton v United States*, 391 US 123; 88 S Ct 1620; 20 L Ed 2d 476 (1968). I would remand for a *Ginther*¹ hearing

to determine if there was any legitimate trial strategy that

could have resulted in counsel's failure to bring a motion to sever the trial or at least a motion for separate juries. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 57 (1994).

/s/ E. Thomas Fitzgerald

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). Defendant filed a motion to remand with this Court concurrent with his brief on appeal. This Court denied the motion on September 10, 1996. Defendant filed a motion for interlocutory appeal to the Michigan Supreme Court on November 5, 1996, which is still pending.